

Nuclear Regulatory Commission

§ 51.105

(2) Any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing.

(3) In the proceeding the presiding officer will decide those matters in controversy among the parties within the scope of NEPA and this subpart.

(b) In any proceeding in which a hearing is held where the NRC staff has determined that no environmental impact statement need be prepared for the proposed action, unless the Commission orders otherwise, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

(c) In any proceeding in which a limited work authorization is requested, unless the Commission orders otherwise, a party to the proceeding may take a position and offer evidence only on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention, in accordance with the provisions of part 2 of this chapter applicable to the limited work authorization or in accordance with the terms of any notice of hearing applicable to the limited work authorization. In the proceeding, the presiding officer will decide all matters in controversy among the parties.

[49 FR 9381, Mar. 12, 1984, as amended at 72 FR 57445, Oct. 9, 2007]

PRODUCTION AND UTILIZATION FACILITIES

§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a construction permit or early site permit

for a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, the presiding officer will:

(1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or early site permit should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or early site permit should be issued as proposed by the NRC's Director, Office of New Reactors or Director, Office of Nuclear Reactor Regulation, as appropriate.

(b) The presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning the benefits assessment (e.g., need for power) or alternative energy sources if those issues were not addressed by the applicant in the early site permit application.

(c)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a construction permit for a nuclear power plant or an early site permit under part 52 of this chapter, where the applicant requests a limited work authorization under § 50.10(d) of this chapter, the presiding officer shall—

(i) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and the regulations in the subpart have been met, with respect to the activities to be conducted under the limited work authorization;

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(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) Determine whether the redress plan will adequately redress the activities performed under the limited work authorization, should limited work activities be terminated by the holder or the limited work authorization be revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated construction permit or early site permit, as applicable;

(iv) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(v) In a contested proceeding, determine whether, in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, new and significant information on the environmental impacts of those activities, such that the limited work authorization should not be issued as proposed.

(3) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section.

[72 FR 49516, Aug. 28, 2007, as amended at 72 FR 57446, Oct. 9, 2007; 73 FR 5724, Jan. 31, 2008]

§ 51.105a Public hearings in proceedings for issuance of manufacturing licenses.

In addition to complying with applicable requirements of § 51.31(c), in a proceeding for the issuance of a manufacturing license, the presiding officer will determine whether, in accordance with the regulations in this subpart, the manufacturing license should be issued as proposed by the NRC's Director, Office of New Reactors or Director, Office of Nuclear Reactor Regulation, as appropriate.

[73 FR 5724, Jan. 31, 2008]

§ 51.106 Public hearings in proceedings for issuance of operating licenses.

(a) Consistent with the requirements of this section and as appropriate, the presiding officer in an operating license hearing shall comply with any applicable requirements of §§ 51.104 and 51.105.

(b) During the course of a hearing on an application for issuance of an operating license for a nuclear power reactor, or a testing facility, the presiding officer may authorize, pursuant to § 50.57(c) of this chapter, the loading of nuclear fuel in the reactor core and limited operation within the scope of § 50.57(c) of this chapter, upon compliance with the procedures described therein. In any such hearing, where any party opposes such authorization on the basis of matters covered by subpart A of this part, the provisions of §§ 51.104 and 51.105 will apply, as appropriate.

(c) The presiding officer in an operating license hearing shall not admit contentions proffered by any party concerning need for power or alternative energy sources or alternative sites for the facility for which an operating license is requested.

(d) The presiding officer in an operating license hearing shall not raise issues concerning alternative sites for the facility for which an operating license is requested *sua sponte*.